



Federal Communications Commission
Washington, D.C. 20554

JAN 07 2002

Joseph A. Godles, Esquire
Goldberg, Godles, Weiner and Wright
1229 19th Street, NW
Washington, DC 20036

RE: Petition for Reconsideration In re Request for Waiver and Refund of Filing Fees,
PanAmSat Corporation Application for PAS-8B Satellite, Fee Control No.
9810308210288001

Dear Mr. Godles:

We have reviewed PanAmSat Corporation's (PanAmSat) Petition for Reconsideration (*Petition*) timely filed on August 31, 2000. The *Petition* seeks reconsideration of our letter decision¹ dated August 1, 2000, denying PanAmSat's request for a waiver² and refund of the fee paid in connection with PanAmSat's application to launch and operate the PAS-8B replacement satellite (*Application*). For the below stated reasons, we cannot grant PanAmSat's *Petition*, and, instead, affirm our previous decision.

PanAmSat presents three reasons in its *Petition* why reconsideration is appropriate. First, PanAmSat asserts that the decision does not identify any particular basis for the denial. Second, PanAmSat contends that the *Request for Waiver* was virtually identical to other "satellite application fee waiver requests granted by OMD involving replacement satellites that . . . were technically comparable to the satellites they were replacing."³ Finally, PanAmSat alleges that the decision failed to follow Commission precedent. We disagree on all points and, for the stated reasons, deny the *Petition*.

PanAmSat urges reconsideration because the *Letter Decision, August 1, 2000* did not identify a particular basis for denial. We disagree and reiterate that PanAmSat failed to meet its two burdens of demonstrating "good cause" and that the waiver of the fee "would promote the public interest."⁴ We referred to PanAmSat's general conclusions as an example of insufficiency

¹ Letter from Mark Reger to Joseph A. Godles, Esquire, Request for Waiver and Refund of Filing Fees, PanAmSat Corporation Application for PAS-8B Satellite, Fee Control No. 9810308210288001, August 1, 2000 (*Letter Decision, August 1, 2000*).

² PanAmSat Corporation, *Request for Waiver and Refund of Filing Fees*, May 18, 1999 (*Request for Waiver*).

³ *Petition* at p. 2.

⁴ 47 U.S.C. § 158(d)(2); 47 CFR § 1.1117(a). *Report & Order, Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd. 947, 961, ¶ 88 (1987) (*Report & Order, Fees I*) ("those requesting a waiver or deferral will have the burden of demonstrating

in meeting its obligation. In that regard, PanAmSat did not meet its burden by merely stating it expects to use PAS-8B as a replacement for PAS-8. More specifically, PanAmSat failed to show that PAS-8 suffered a "catastrophic in-orbit failure,"⁵ or that the replacement event otherwise demonstrates extraordinary and compelling circumstances.⁶ PanAmSat's *Application* represented that PAS-8B will "replace the PAS-8 satellite . . . [that] lacks full payload capacity due to [unspecified] losses suffered in its power generating system." Notwithstanding that conclusion, neither the *Application* nor the *Request for Waiver* included details concerning the reasons for the replacement effort or an explanation of the extent to which the useful life of the PAS-8 satellite had been reduced.

PanAmSat's *Petition* next asserts that we were required to reach the same decision as when we waived the new application filing fee for PanAmSat's Galaxy X-R replacement satellite.⁷ In that unrelated case,⁸ we granted the waiver, placing reliance on *Fee Decisions* (*Hughes Communications Galaxy, Inc.*), 9 FCC Rcd 2223, 2230-2231 (Office of the Managing Director 1994). A significant fact in that earlier decision involving Hughes, which is distinguishable from the PAS-8B *Request for Waiver*, but comparable to PanAmSat's request for Galaxy X-R, is that the Hughes satellite was destroyed during launch. PanAmSat's further argument, that the fee for PAS-8B does not reflect the amount of actual effort expended by the Commission on the particular application or type of application, was considered and rejected when the Commission considered issues concerning the collection of fees required by the Consolidated Omnibus Budget Reconciliation Act of 1985, 47 U.S.C. § 158, Pub.L. No. 99-272. The Commission noted:

[I]n a number of situations, parties have opined that a given fee in no way reflects the amount of actual effort expended by the Commission on a particular application or type of application. In this regard, it is important for the public to understand that the amount of the fee represents the Commission's estimate, accepted by Congress, on the average cost to the Commission of providing the service. Conference Report at 423. As an average, there will be individual situations in which the actual cost may be more or less. It is not our intention to make individualized determinations of the "appropriate fee." Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress. See 47 U.S.C. § 158(d)(2); 47 C.F.R. § 1.1115.

that, for each request, a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the specific regulatory action of the FCC." Neither the *Request for Waiver* nor the *Application* made such a showing.

⁵ 47 CFR § 25.113(g), "an application for authority to launch and operate an on-ground spare satellite will be considered to be a newly filed application for cut-off purposes, except where the space station to be launched is determined to be an emergency replacement . . . that has been lost as a result of a launch failure or a catastrophic in-orbit failure." Emphasis added.

⁶ *Report & Order, Fee I*, 2 FCC Rcd. at 954, ¶40.


⁷ PanAmSat Corporation, *Request for Waiver and Refund of Filing Fees*, May 18, 1999.

⁸ See Letter from Mark Reger to Joseph A. Godles, Esquire, PanAmSat Corporation Fee Control #9905198210333001, dated June 16, 2000 (PanAmSat requested authorization to launch and operate Galaxy X-R to replace Galaxy X, which suffered a launch failure. The Commission refunded to PanAmSat \$83,070, which was the amount exceeding the required fee for a modification of a satellite authorization.)

Memorandum Opinion And Order, Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 3 FCC Rcd. 5987 (1988), 1988 WL 489299 (F.C.C.), *Report and Order, Fees I*, 2 FCC Rcd. at 949 (1987) ("the Commission's processing costs were but one factor in the rough calculus that resulted in the legislated fees"). See *Memorandum Opinion and Order*, Applications Of Lockheed Martin Corporation And Lockheed Martin Global Telecommunications, Inc., 16 FCC Rcd. 12805, 12807, ¶ 5 (2001) (In denying Applications for Review of decisions by Office of Managing Director, the Commission affirmed its position that it will not "make individualized determinations of costs or generally to lower fees in circumstances where Congress has chosen not to do so.").

In light of PanAmSat's failure to show that the particular satellite, PAS-8, suffered a catastrophic in-orbit failure or that it is not available to provide further service, we find that PanAmSat failed to establish a basis for relief and that this ruling is in accord with Commission precedent. We therefore deny your *Petition* and its further request for a waiver and refund of the application fee. If you have any questions concerning this matter, please contact the Revenue Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark Reger", written in a cursive style.

for Mark Reger
Chief Financial Officer

9810308210288001

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)

PanAmSat Corporation)

Request for Waiver and Refund of
Filing Fees for the PAS-8B Satellite)

Fee Control No. 9810308210288001

RECEIVED

AUG 31 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR RECONSIDERATION

PanAmSat Corporation ("PanAmSat") hereby petitions the Office of the Managing Director ("OMD") to reconsider its decision, issued in a letter from Mark Reger, OMD Chief Financial Officer, to Joseph A. Godles, counsel to PanAmSat, August 1, 2000, denying PanAmSat's request for a waiver and refund of the fee paid in connection with PanAmSat's application to launch and operate the PAS-8B replacement satellite (the "Letter Decision").¹

DISCUSSION

On October 29, 1998, PanAmSat filed an application to launch and operate a satellite — known as PAS-8B — to replace the PAS-8 satellite, which had suffered losses in its power generating system. PanAmSat filed along with its PAS-8B application a request for waiver and refund of the application filing fees (the "Request").² On August 1, 2000, OMD issued the Letter Decision denying the Request. PanAmSat seeks reconsideration of that decision.

¹ A copy of the Letter Decision is attached as Exhibit A.

² A copy of PanAmSat's Request is attached as Exhibit B.

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In the Letter Decision, OMD does not identify any particular basis for the denial. Instead, the Letter Decision merely suggests that OMD found PanAmSat's Request to be overly general and conclusory.³

In fact, however, the PAS-8B Request was virtually identical to satellite application fee waiver requests granted by OMD involving replacement satellites that - like PAS-8B - were technically comparable to the satellites they were replacing.⁴ OMD has found that in such cases the satellite application filing fee, which now is approaching \$100,000 per space station for geostationary satellites such as PAS-8B, bears "scant relationship to [the Commission] resources required to process [a] replacement satellite" application.⁵ Rather, OMD has concluded, the "processing burden" associated with such a replacement satellite application is consistent with that of an application to modify a space station.⁶ As a result, OMD normally will assess only the space station modification fee for such replacement satellite applications, waiving the remainder of the fee. That has been true both for PanAmSat and other satellite operators.⁷

When PanAmSat filed its PAS-8B Request, it used the same form of request - and virtually the same language - that it had used previously in successfully obtaining partial waiver of replacement satellite application fees. Indeed, a comparison of the fee waiver request submitted in connection with PanAmSat's Galaxy X-R replacement

³ Letter Decision ¶ 3 ("The Commission does not find these general conclusions instructive in meeting PanAmSat's burden.").

⁴ See, e.g., PanAmSat Request for Waiver and Refund of Filing Fees for the Galaxy X-R replacement satellite, a copy of which attached as Exhibit C.

⁵ Fee Decisions of the Managing Director, 9 FCC Rcd 2223, 2231 (1994).

⁶ Letter from Mark Reger to Joseph A. Godles (June 16, 2000) (attached as Exhibit D).

⁷ See, e.g., Fee Decisions of the Managing Director, 9 FCC Rcd at 2230-31 (granting Hughes Communications Galaxy partial waiver of the filing fee for a replacement satellite); Fee Decisions of the Managing Director, 10 FCC Rcd 8924, 8928-29 (1995) (granting AT&T Corp. partial waiver of the filing fee for a replacement satellite); Letter from Marilyn J. McDermott, FCC Associate Managing Director, to Joseph A. Godles (Feb. 24, 1997) (granting PanAmSat partial waiver of the filing fee for its PAS-2R replacement satellite); Letter from Mark Reger to Joseph A. Godles (June 16, 2000) (granting PanAmSat partial waiver of the filing fee for its Galaxy X-R replacement satellite).

satellite (Exhibit C) and the PAS-8B Request (Exhibit B) reveals that, to the extent they differ, the PAS-8B Request is more specific and less conclusory than the Galaxy X-R request, which was granted by OMD (Exhibit D) on June 16, 2000, little more than a month before the Letter Decision was issued.

In keeping with the policies and precedents outlined above, PanAmSat's fee waiver request should have been granted. As PanAmSat noted in its Request, the PAS-8B satellite had the same technical characteristics, covered the same areas, used the same frequency bands, operated at the same power, and was identical in all material respects to PAS-8 — the satellite that it replaced. As a result, the Commission's staff was required to engage in only minimal regulatory review of the application. Under those circumstances, it would be inequitable - and contrary to precedent - to assess PanAmSat a full space station application fee for the PAS-8B replacement satellite application.

CONCLUSION

Accordingly, and for the reasons set forth above, on reconsideration the OMD should reverse the Letter Decision and grant PanAmSat a waiver and partial refund of the filing fees paid in connection with the PAS-8B application.

Respectfully submitted,

PANAMSAT CORPORATION

/s/ Joseph A. Godles

Joseph A. Godles

W. Kenneth Ferree

GOLDBERG, GODLES, WIENER & WRIGHT
1229 19th Street, NW
Washington, DC 20036
(202) 429-4900
Its Attorneys

August 31, 2000

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 1 2000

OFFICE OF
MANAGING DIRECTOR

Joseph A. Godles, Esquire
Goldberg, Godles, Weiner and Wright
1229 19th Street, NW
Washington, DC 20036

RE: Request for Waiver and Refund of Filing Fees,
PanAmSat Corporation Application for PAS-8B Satellite,
Fee Control No. 9810308210288001

Dear Mr. Godles:

This responds to the above-styled request of October 29, 1998 requesting a waiver and refund of the application fee of \$89,460 paid with PanAmSat Corporation's application to launch and operate the satellite known as PAS-8B.

PanAmSat requests a waiver and refund on the ground that PAS-8B replaces PAS-8 by covering the same areas and use the same frequency bands as PAS-8. Because PAS-8B is comparable "in all material respects with [the authorization] already granted . . . for PAS-8 . . . [the Commission would expend] minimal regulatory review"

The Commission does not find these general conclusions instructive in meeting PanAmSat's burden of "good cause is shown and where waiver or deferral of the fee would promote the public interest." 47 CFR §1.1117(a). Even construing the application as part of the request for waiver is insufficient in demonstrating the required good cause *and* that a waiver of the fee would promote the public interest.

Accordingly, the Commission denies PanAmSat's request for waiver and refund of filing fees. If you have any questions, please contact the Credit & Debt Management Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

EXHIBIT B

FILE COPY

In the Matter of the Application of

PANAMSAT LICENSEE CORP.

For Authority To Launch and Operate
A Replacement Fixed-Satellite
Service Space Station

File No.

RECEIVED

OCT 29 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REQUEST FOR WAIVER AND REFUND OF FILING FEES

PanAmSat Licensee Corp. ("PanAmSat"), pursuant to Section 8(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 158(d)(2), and Sections 1.1113 and 1.1117 of the Commission's rules, hereby requests that the Commission waive and refund the filing fee for the attached application for authority to construct, launch, and operate a replacement satellite.

Under the Commission's rules, the Commission may waive filing fees "where good cause is shown and where waiver ... of the fees would promote the public interest."¹ Any fee so waived should be returned or refunded to the applicant.²

The attached application seeks authority to launch and operate a Ku-band fixed-satellite service ("FSS") satellite, to be known as PAS-8B, to replace PanAmSat's PAS-8 satellite. Since the launch of PAS-8 in late 1997, it has become apparent that PAS-8 lacks full payload capability due to losses suffered in its power generating system. PanAmSat proposes to launch and operate PAS-8B as a replacement for PAS-8.

PAS-8B will have the same technical characteristics as PAS-8. It will cover the same areas in Latin America as PAS-8 and use the same frequency bands as PAS-8 operating at the same EIRPs. In short, the authorization now being requested by PanAmSat for PAS-8B is comparable in all material respects with that already granted by the Commission to PanAmSat for PAS-8.

¹ 47 C.F.R. § 1.1117(a).

² 47 C.F.R. § 1.1113(a)(5).

As a result, the Commission will be required to engage in minimal regulatory review of the attached application. Since the Commission already has passed on the various technical and operational aspects of PAS-8, and since the attached application raises no new policy issue, the "fees contained in the fee schedule bear scant relationship to the resources required to process the replacement satellite's authorizations."³ Accordingly, PanAmSat requests refund and waiver of the filing fee submitted in connection with the attached application for authority to construct, launch, and operate the PAS-8B replacement satellite.⁴

Respectfully submitted,

PANAMSAT LICENSEE CORP.

By: /s/ Joseph A. Godles
Joseph A. Godles

GOLDBERG, GODLES, WIENER
& WRIGHT
1229 19th Street, NW
Washington, D.C. 20036
(202) 429-4900

Its Attorneys

October 29, 1998

³ See Fee Decisions of the Managing Director, 9 FCC Rcd 2223, 2230-31 (1994) (granting partial fee waiver for application to construct, launch, and operate replacement satellite).

⁴ Under similar circumstances, the Commission refunded to PanAmSat \$74,620 of an \$80,360 fee paid in connection with an application for authority to construct, launch, and operate the PAS-2R replacement satellite. See Letter from Marilyn J. McDermott, FCC Associate Managing Director, to Joseph A. Godles, Attorney for PanAmSat (Feb. 24, 1997).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

EXHIBIT C

RECEIVED

MAY 18 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No.

FILE COPY

In the Matter of the Application of
PANAMSAT CORPORATION
For Authority To Launch and Operate
A Replacement C/Ku Hybrid Fixed-Satellite
Service Space Station

REQUEST FOR WAIVER AND REFUND OF FILING FEES

PanAmSat Corporation ("PanAmSat"), pursuant to Section 8(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 158(d)(2), and Sections 1.1113 and 1.1117 of the Commission's rules, hereby requests that the Commission waive and refund the filing fee for the attached application for authority to launch and operate a replacement satellite.

Under the Commission's rules, the Commission may waive filing fees "where good cause is shown and where waiver ... of the fees would promote the public interest."¹ Any fee so waived should be returned or refunded to the applicant.²

The attached application seeks authority to launch and operate a C/Ku-band hybrid fixed-satellite service ("FSS") satellite, to be known as Galaxy X-R, to replace PanAmSat's Galaxy X satellite, which suffered a launch failure on May 8, 1998. PanAmSat proposes to launch and operate Galaxy X-R as a replacement for Galaxy X.

Galaxy X-R will have substantially the same technical characteristics as Galaxy-X. As a result, the Commission will be required to engage in minimal regulatory review of the attached application. Because the Commission already has passed on the various technical and operational aspects of Galaxy X, and because the attached application raises no new policy issue, the "fees contained in the fee schedule bear scant relationship to the resources required to process the replacement

¹ 47 C.F.R. § 1.1117(a).

² 47 C.F.R. § 1.1113(a)(5).

satellite's authorizations."³ Accordingly, PanAmSat requests refund and waiver of the filing fee submitted in connection with the attached application for authority to launch and operate the Galaxy X-R replacement satellite.⁴

Respectfully submitted,

PANAMSAT CORPORATION

By: 
Joseph A. Godles

GOLDBERG, GODLES, WIENER
& WRIGHT
1229 19th Street, NW
Washington, D.C. 20036
(202) 429-4900

Its Attorneys

May 18, 1999

³ See Fee Decisions of the Managing Director, 9 FCC Rcd 2223, 2230-31 (1994) (granting partial fee waiver for application to construct, launch, and operate replacement satellite).

⁴ Under similar circumstances, the Commission refunded to PanAmSat \$74,620 of an \$80,360 fee paid in connection with an application for authority to construct, launch, and operate the PAS-2R replacement satellite. See Letter from Marilyn J. McDermott, FCC Associate Managing Director, to Joseph A. Godles, Attorney for PanAmSat (Feb. 24, 1997).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 15 1999

OFFICE OF
MANAGING DIRECTOR

Joseph A. Godles, Esquire
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, D.C. 20036

Re: PanAmSat Corporation
Fee Control # 9905198210333001

Dear Mr. Godles:

This responds to the request you filed on behalf of PanAmSat Corporation ("PanAmSat") for a waiver and refund of the fee payment it submitted in connection with its application for authority to construct, launch and operate a satellite.

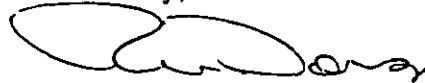
You represented that PanAmSat filed the application and the associated fee payment, in the amount of \$89,460.00, in order to obtain authority to construct, launch and operate a "C/Ku-band hybrid fixed-satellite service satellite, to be known as Galaxy X-R." You further represented that Galaxy X-R was intended to be a replacement satellite, and that its technical requirements were to be identical with those of its previously authorized Galaxy X satellite, which suffered a launch failure on May 8, 1998. *See PanAmSat Corporation*, DA 00-91 (January 18, 2000). You maintained that because the Commission previously had "passed on the various technical and operational aspects of Galaxy X," its review of the instant application was "minimal" and thus sought a waiver and refund of the fee payment.

In *Fee Decisions (Hughes Communications Galaxy, Inc.)*, 9 FCC Rcd 2223, 2230-2231 (Office of Managing Director 1994), we considered a similar request for waiver and refund of a fee payment filed in connection with an application to construct, launch and operate a replacement satellite. Specifically, we found that the fee requirement bore "scant relationship to [the Commission] resources required to process the replacement satellite's authorizations because much of the processing is insignificantly different from that required for [the] initial satellite." *Id.* at 2231. We concluded that "the processing of [the] application for construction, launch and operational authority [of a replacement satellite] is consistent with the processing burden for an application to modify a space station." Accordingly, we assessed the licensee the fee specified for an application to modify a space station authorization, granting it a partial waiver and fee refund (the difference between the fee associated with a construction permit application to launch and operate a satellite and an application to modify a satellite authorization).

Consistent with *Hughes Communications Galaxy, Inc.*, PanAmSat will be assessed a fee in the amount of \$6,390.00, the fee associated with an application to modify a satellite authorization.

Accordingly, your request is granted to the extent specifically indicated above. We will assess PanAmSat a total fee of \$6,390.00 to cover its application to construct, launch and operate its replacement Galaxy X-R replacement satellite. Therefore, PanAmSat is entitled to a refund of \$83,070.00. A check, made payable to the maker of the original check and drawn in the amount of \$83,070.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Credit & Debt Management Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Reger', written over a horizontal line.

Mark Reger
Chief Financial Officer

Payment Transactions Detail Report

Date: 10/05/2000

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Fcc Account Number	Payer TIN	Received Date							
9810308210288001	PANAMSAT LICENSEE CORPORATION ONE PICKWICK PLAZA GREENWICH CT 06830	FCC2054380		0/29/1998 00:00:0							
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$89,460.00	\$89,460.00	1	BNY	1		PANAMSAT LICENSEE CORPORATION	06830		\$89,460.00	1	PMT
Total	1								\$89,460.00		